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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/692,596	10/19/2000	Lily Barkovic Mummert	YOR920000461-US1	8300

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EXAMINER

TODD, GREGORY G

ART UNIT	PAPER NUMBER
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2157

DATE MAILED: 04/18/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/692,596

Applicant(s)

MUMMERT ET AL.

Examiner

Gregory G. Todd

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 February 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Amendment

1. This is a third office action in response to applicant's appeal brief filed, 23 January 2006, of application filed, with the above serial number, on 19 October 2000 in which claims 1, 10, and 12 have been amended in the 05 July 2005 Applicant response, said amendments hereby entered. Claims 1-20 are therefore pending in the application.

In view of the Appeal Brief filed on 23 January 2006, PROSECUTION IS HEREBY REOPENED. A new ground of rejection is set forth below.

To avoid abandonment of the application, appellant must exercise one of the following two options:

- (1) file a reply under 37 CFR 1.111 (if this Office action is non-final) or a reply under 37 CFR 1.113 (if this Office action is final); or,
- (2) request reinstatement of the appeal.

If reinstatement of the appeal is requested, such request must be accompanied by a supplemental appeal brief, but no new amendments, affidavits (37 CFR 1.130, 1.131 or 1.132) or other evidence are permitted. See 37 CFR 1.193(b)(2).

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

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Claim 1 recites the limitation "the workload unit" in line 10. There is insufficient antecedent basis for this limitation in the claim. No previous specific workload unit has been declared in the claim.

Claim 5 recites the limitation " the expiration dates" in line 2. There is insufficient antecedent basis for this limitation in the claim. No previous specific workload unit has been declared in the claim.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claims 1-20 are rejected under 35 U.S.C. 102(e) as being anticipated by Yang et al (hereinafter "Yang", 6,542,854).

As per Claim 1, Yang teaches a method for evaluating workload across a processing environment having a plurality of computer systems each having a plurality of assigned workload units comprising the steps of:

assigning a plurality of impact values, one impact value for each workload unit assigned for each of the plurality of computing systems, wherein said assigning of each impact value comprises determining the change in system expiration date should the

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workload unit be removed from the system (at least col. 5 line 1 - col. 6 line 19; CAE/UFW/CAW using workload definition information for sizing/ cost purposes); and assessing the workload based on said impact values (at least col. 33, lines 30-62; evaluating systems for suitable operation of workload).

As per Claim 2. The method of Claim 1 wherein the change in system expiration date is determined based on system life expectancy (at least col. 5, lines 1-17; col. 6, lines 6-22; col. 7, lines 31-62; workload growth, utilization).

As per Claim 3. The method of Claim 1 wherein the change in system expiration date is determined based on capacity space (at least col. 5, lines 1-17; col. 6, lines 6-22; col. 7, lines 31-62; col. 15, lines 35-54; capacity).

As per Claim 4. The method of Claim 1 further comprising sorting said workload units based on said impact values into a sorted impact list (at least col. 26 line 45 - col. 27 line 5).

As per Claim 5. The method of Claim 1 further comprising altering the workload in the processing environment to change the expiration dates of at least two of said plurality of computer systems (at least col. 25, lines 13-20).

As per Claim 6. The method of Claim 1 further comprising comparing the expiration date of each of said plurality of computing systems to at least one target planning date for servicing each of said plurality of computing systems (at least col. 33, lines 30-62).

As per Claim 7. The method of Claim 6 further comprising altering the workload in the processing environment to change the expiration date relative to the target

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planning date for at least two of said plurality of computer systems (at least col. 25, lines 13-20).

As per Claim 8. The method of Claim 6 further comprising the steps of:

creating a From list of computer systems for which the expiration date precedes the at least one planning date;

creating a To list of computer systems for which the expiration date is later than said at least one planning date; and

reassigning workload units from computer systems on said From list to computer systems on said To list based on said impact values (at least col. 6, lines 9-36; transferable workload for capacity planning).

As per Claim 9. The method of Claim 8 further comprising calculating new expiration dates for computer systems on said From and said To lists after said reassigning (at least col. 5 line 1 - col. 6 line 36).

As per Claim 11. The apparatus of Claim 10 further comprising at least one storage location accessible by the administrative processor for storing data relating to said plurality of computer systems (at least Fig. 7).

Claims 10 and 12-20 do not add or define any additional limitations over claims 1-9 and 11 and therefore are rejected for similar reasons.

Response to Arguments

5. Applicant's arguments with respect to claims 1-20 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Newly cited Papaefstathiou and Abu Electronic Ata, in addition to previously cited MacFarlane et al, Chafe, Fong et al, Miller, Hartsell et al, Mummert et al, Flockhart et al, and Sanders et al are cited for disclosing pertinent information related to the claimed invention. Applicants are requested to consider the prior art reference for relevant teachings when responding to this office action.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gregory G. Todd whose telephone number is (571)272-4011. The examiner can normally be reached on Monday - Friday 9:00am-6:00pm w/ first Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ario Etienne can be reached on (571)272-4001. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Gregory Todd

Patent Examiner

Technology Center 2100


MUSTAFA M. MEKY
PATENT EXAMINER